

RESOLUTION NO. 74929

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE ISSUANCE OF ITS GENERAL OBLIGATION BONDS, AUTHORIZING AND DIRECTING THE EXECUTION OF A FISCAL AGENT AGREEMENT AND CERTAIN OTHER RELATED DOCUMENTS, AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, an election was duly and regularly held in the City of San José (the "City") on November 7, 2000 for the purpose of submitting to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$211,790,000 for the purpose of acquiring property for and constructing improvements to the neighborhood library facilities throughout the City (the "Libraries Proposition"), which proposition was entitled "San José Neighborhood Libraries Bond"; and

WHEREAS, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Libraries Bonds"); and

WHEREAS, an election was duly and regularly held in the City on November 7, 2000 for the purpose of submitting to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$228,030,000 for the purpose of acquiring property for and constructing improvements to parks and recreation facilities (the "Parks Proposition"), which proposition was entitled "San José Safe Neighborhood Parks and Recreation Bond"; and

WHEREAS, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Parks Bonds"); and

WHEREAS, an election was duly and regularly held in the City on March 5, 2002 at which there was submitted to the qualified electors of the City the proposition of whether bonds should be issued in the principal amount of not to exceed \$159,000,000 for the purpose of acquiring property for and constructing improvements in order to add and improve police and fire stations and training facilities and to create state of the art 911 communications facilities (the "Public Safety Proposition"), which proposition was entitled "San José 911, Fire, Police, Paramedic, and Neighborhood Security Act"; and

WHEREAS, more than two-thirds of the votes cast at said election were in favor of the issuance of said bonds (the "Public Safety Bonds"); and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election and the authorization contained in Chapter 14.28 of the San José Municipal Code (the "Act"), the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2001 in a principal amount equal to \$71,000,000, \$31,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$40,000,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, and the authorization contained in the Act, the City has

heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of July 1, 2002 in a principal amount equal to \$116,090,000, including \$30,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition, \$46,715,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition and \$39,375,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election and the March 5, 2002 election, and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of July 1, 2004, in a principal amount equal to \$118,700,000, with \$58,300,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition, \$46,000,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition and \$14,400,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorization for Libraries Bonds received at the November 7, 2000 election and the authorization received at the March 5, 2002 election, and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2005, in a principal amount equal to \$46,300,000, with \$21,300,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$25,000,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2006, in a principal amount equal to \$105,400,000, with \$60,000,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$45,400,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

WHEREAS, pursuant to the authorization for Parks Bonds received at the November 7, 2000 election and the authorization received at the March 5, 2002 election, and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2007, in a principal amount equal to \$90,000,000, with \$22,100,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition, and \$67,900,000 of such bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, pursuant to the authorizations received at the November 7, 2000 election and the authorization contained in the Act, the City has heretofore issued general obligation bonds pursuant to a fiscal agent agreement dated as of June 1, 2008, in a principal amount equal to \$33,100,000, with \$5,285,000 of such bonds constituting Libraries Bonds issued pursuant to the Libraries Proposition and \$27,815,000 of such bonds constituting Parks Bonds issued pursuant to the Parks Proposition; and

WHEREAS, pursuant to the authorization received at the March 5, 2002 election and the authorization contained in the Act, the City intends to issue general obligation bonds, designated as "City of San José General Obligation Bonds, Series 2009 (Public Safety

Projects)” in a principal amount of not to exceed \$9,000,000 (the “Bonds”), with all of the Bonds constituting Public Safety Bonds issued pursuant to the Public Safety Proposition; and

WHEREAS, the City does not intend to issue general obligation bonds pursuant to the Libraries Proposition at this time and has no further voter approved authorization to issue general obligation bonds pursuant to the Parks Proposition; and

WHEREAS, the City Council of the City has duly considered such transactions and desires at this time to approve said transactions and the documents related thereto; and

WHEREAS, the City expects to pay and incur certain expenditures in connection with the projects to be financed pursuant to the Libraries Proposition and the projects to be financed pursuant to the Public Safety Proposition prior to the issuance and sale of the Bonds or any additional series of bonds issued pursuant to the Libraries Proposition and/or the Public Safety Proposition, and the City intends to reimburse itself and to pay third parties for such prior expenditures from the proceeds of the Bonds or such additional series of bonds; and

WHEREAS, Section 1.150-2 of the Treasury Regulations promulgated under the Internal Revenue Code of 1986 (the “Treasury Regulations”) requires the City to declare its reasonable official intent to reimburse prior expenditures with the proceeds of a subsequent borrowing; and

WHEREAS, the Treasury Regulations require that any reimbursement allocation of proceeds of the Bonds be made with respect to expenditures incurred prior to the issuance of the Bonds will occur not later than eighteen (18) months after the later of (i) the date on which the expenditure is paid or (ii) the date on which the project is placed in service or abandoned, but in no event later than three (3) years after the expenditure is paid;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

Section 1. Approval of Fiscal Agent Agreement. The proposed form of fiscal agent agreement expected to be dated as of June 1, 2009, by and between the City and Wells Fargo Bank, National Association (the “Fiscal Agent”), presented to this meeting (the “Fiscal Agent Agreement”) is hereby approved, and any of the City Manager, the Deputy Director of Finance or the Debt Administrator (each an “Authorized Officer” and, collectively, the “Authorized Officers”) are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Fiscal Agent Agreement in substantially said form, with any additions thereto (including the insertion of the maturity dates, principal amounts and interest rates of the Bonds) and changes therein as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney, the execution of which by an Authorized Officer shall be conclusive evidence of the approval of any such additions and changes. The Council hereby authorizes the performance by the City of its obligations under the Fiscal Agent Agreement. The selection of Wells Fargo Bank, National Association as Fiscal Agent is hereby approved and ratified.

Section 2. Approval of Form of Bonds. The form of Bonds set forth in the form of Fiscal Agent Agreement is hereby approved, and any of the Authorized Officers of the City are hereby authorized and directed to execute, and the City Clerk is hereby authorized to attest, the Bonds in the name and on behalf of the City and to cause the delivery thereof as provided for below

with any additions thereto and changes therein as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney.

Section 3. Sale and Issuance of Bonds. The sale of the Bonds is hereby approved provided that (a) the true interest cost of the Bonds shall not exceed eight percent (8%) per annum, (b) the principal amount of Bonds sold shall not exceed \$9,000,000, and (c) the final maturity date of the Bonds shall not be more than thirty-five (35) years from the date of issuance. Any of the Authorized Officers is hereby authorized and directed to evidence the City's acceptance of an offer to purchase the Bonds following competitive bidding pursuant to the Official Notice Inviting Bids relating to the Bonds (the "Official Notice of Sale"). The City Council hereby approves the Official Notice of Sale relating to the Bonds and the Notice of Intention to Sell substantially in the forms presented to this meeting with any additions thereto and changes therein as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The City Council hereby ratifies the prior publication of the Notice of Intention to Sell Bonds required by Section 53692 of the California Government Code.

Section 4. Approval of Preliminary and Final Official Statement. The proposed form of preliminary official statement with respect to the Bonds (the "Preliminary Official Statement") in substantially the form presented to this meeting is hereby approved with such additions thereto or changes therein as any of the Authorized Officers, acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The Authorized Officers are hereby authorized and directed, for and on behalf of the City, to execute all certificates necessary to deem final the Preliminary Official Statement as of its date, with the exception of certain final pricing and related information. The Preliminary Official Statement with such changes therein relating to the sale of the Bonds as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney shall hereinafter be referred to as the "Official Statement." The Authorized Officers are hereby authorized and directed, for and on behalf of the City, to execute and deliver the Official Statement with such additions thereto or changes therein, and the execution of the Official Statement by an Authorized Officer shall be conclusive evidence of the approval of any such additions and changes. The use and distribution of said Preliminary Official Statement and use and distribution of the Official Statement in connection with the sale of the Bonds is hereby ratified and approved.

Section 5. Bond Insurance. The Authorized Officers, each acting alone, are hereby authorized to take any and all action that he or she deems necessary to qualify the Bonds for municipal bond insurance.

Section 6. Delegation of Authority to Authorized Officer. The Authorized Officers are hereby authorized and directed to execute, sign and deliver any and all approvals, certificates, statements, requests, requisitions and orders of the City in connection with the sale and issuance of the Bonds, the purchase of the Bonds and the other transactions described herein.

Section 7. Reimbursement. The City hereby declares its official intent to reimburse expenditures of the City relating to the projects to be financed pursuant to the Libraries Proposition and/or the Public Safety Proposition that are incurred or paid prior to the issuance and sale of the Bonds or any additional series of bonds issued pursuant to the Libraries Proposition and/or the Public Safety Proposition from the proceeds of the Bonds or such additional series of bonds.

Section 8. General Authority. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the transactions described herein or to otherwise effectuate the purposes of this Resolution, including (i) determining the amount of Bonds to be issued, (ii) executing a custody agreement with the Fiscal Agent relating to the deposit and investment of the good faith deposit prior to the issuance and delivery of the Bonds, and (iii) preparing, or causing to be prepared, and executing all appropriate disclosure documents relating to the Bonds and agreements or certificates necessary to comply with the disclosure requirements of Rule 15c2-12, as amended, of the Securities and Exchange Commission. Any such actions previously taken by such officers are hereby ratified and confirmed.

Section 9. Severability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any remaining provisions hereof.

Section 10. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

ADOPTED this 2nd day of June, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CHIRCO, NGUYEN.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk